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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/686,284

10/14/2003

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EXAMINER

THOMAS, JASON M

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/686,284	Applicant(s) CHEFALAS ET AL.	
	Examiner Jason Thomas	Art Unit 2423	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-18 and 21-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-18 and 21-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) ☒ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413) |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) ☐ Information Disclosure Statement(s) (PTO/SB/08) | 5) ☐ Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) ☐ Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see pg. 6, filed January 5th, 2009, with respect to the rejection of claim 21 under 35 U.S.C. Section 112 have been fully considered and are persuasive. The rejection of claim 21 has been withdrawn.
2. Applicant's arguments, see pg. 7-11, filed January 5th, 2009, with respect to the rejections of claims 13-18 and 21-28 under 35 U.S.C. have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new grounds of rejection is made in view of Flickinger et al., U.S. Pub. No. 2002/0083441.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 13, 16 and 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flickinger et al., U.S. Pub. No. 2002/0083441 A1, (hereinafter Flickinger) in view of Morrison, U.S. Patent No. 5,815,671 (hereinafter Morrison).

Regarding claims 13 and 21: Flickinger discloses a method for time-shifting at least one of a plurality of received cohesive signal sets, comprising:

receiving a first cohesive signal set comprising a cache marker at a first time; based on the presence of the cache marker, automatically storing said first cohesive signal set in a computer readable storage medium (see [56], [73-75] for a tag or other form of information, which reads on a cache marker, associated with the ad which can be used by the receiving device to determine whether or not to automatically store the ad; see also [58] where each ad is assigned a unique identifier); and receiving a second cohesive signal set comprising a recall marker at a second time (see [fig. 9], [42], [63], [93] where the programming set contains interval data "avails" and cue data, which reads on a recall marker in that the avail data and cue data are used for recalling and inserting stored ads to be placed in the output stream). While Flickinger discloses wherein in response to a user request for the second cohesive signal set outputting the requested second cohesive signal set and the first cohesive signal set in a timed relation relative to one another that differs from a timed relation in which they were received, wherein the output timed relation is determined by the recall marker (see [fig. 9], [34], [42], [66] where the device can also operate as a personal video recorder to playback programming and ad material in a time shifted manner as requested by the user), Flickinger does not explicitly teach matching the recall marker to the cache marker of the first cohesive signal set.

Morrison teaches using signal sets which, in addition to including programming and ad messages, include codes which can be used to match ad messages with programming messages such that the data which is coded into

the programming can be used to find the uniquely specified message stored in the receiving device (see [col. 3, ll. 16-55], [col. 5, ll. 1-14], [table 1], [cols. 9-10, ll. 60-17]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the receiver and the coded data received in the programming message, as taught in Flickinger, by providing more detailed information which can be used for comparison by the receiving device as taught by Morrison in order to enable program providers to have more control over what ad messages are inserted into the programming messages to provide users with a more unique style of services (see [col. 1, ll. 38-50]).

Regarding claim 16: The combined teachings of Flickinger, in view of Morrison, teach the method of claim 13 wherein outputting said the requested second cohesive signal set comprises outputting a portion of the requested second cohesive signal set said portion as received without storing said portion (see Flickinger [42], [66], [93] where it is implicit that the standard means of receiving and outputting of programming material (second cohesive signal set) is done without storing it first where storing the programming material is presented as an alternative).

Regarding claims 22 and 23: The combined teachings of Flickinger, in view of Morrison, teach transmitting over a wireless and/or cable link (see Flickinger [28], [29] for transmitting over a wireless and/or cable link).

Regarding claim 24: The combined teachings of Flickinger, in view of Morrison, teach wherein the cache marker uniquely identifies the first cohesive signal set of which it comprises and the recall marker uniquely matches the cache marker (see Flickinger [58] which reads on the cache marker uniquely identifying the ad message or first signal set; see also Morrison [col. 3, ll. 5-55], [table 1]).

Regarding claim 25: The combined teachings of Flickinger, in view of Morrison, teach a first cohesive signal set comprising a commercial advertisement (see Flickinger [9], [fig. 3], [42] where the first signal set is for commercial purposes).

2. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flickinger, in view of Morrison and Picco et al., U.S. Pat. 6,029,045 (hereinafter Picco).

Regarding original claim 14: The combined teachings of Flickinger, in view of Morrison, teach receiving message materials which have been distributed from a remote location (see [fig. 1], [abstract]) however they do not teach a received timed relation that is at least two orders of magnitude greater than said output timed relation.

Picco however, teaches a trickle technique where the amount of time required for receiving content may take up to a night, several days or even several weeks (see [col. 9, ll. 1-39]).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to use other methods to retrieve content such a technique involving using unused bandwidth to retrieve programming while the receiver is not being used to view television, as taught in Picco, when providing a system which can receive, by downloading from a remote device, data for viewing, as taught in Flickinger, because this allows bandwidth to be used, when the receiver is not being used, for later viewing thus optimizing the bandwidth of the receiver while in use (see [col. 9, ll. 48-60]).

Regarding original claim 15: The combined teachings of Flickinger, in view of Morrison, teach receiving message materials which have been distributed from a remote location (see [fig. 1], [abstract]) but do not explicitly teach receiving said first and second cohesive signal sets over different channels.

Picco however, teaches receiving segments of content that are downloaded over different channels (see [col. 3, ll. 24]).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the device, as taught by Flickinger and Morrison, to include two tuners, as taught by Picco, which would enable a user to receive signal sets over different channels because a second tuner would allow, as was commonly practiced at the time of the invention, the viewing of picture-in-picture or the recording of a second channel while viewing a first channel (see [fig. 8]; see also [col. 9, ll. 31-37]).

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3. Claims 17 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flickinger, in view of Morrison and Liga et al., U.S. Pub No. 2003/0154128 A1, (hereinafter Liga).

Regarding claim 17: The combined teachings of Flickinger, in view of Morrison, teach the method of using information contained within a second signal set, such as programming message code data, to select a particular first signal set, such as ad messages, for insertion into said second signal set, which is coded with attribute data to assist in the matching of message signal sets (see Flickinger [abstract], see also Morrison [table 1], [col. 3, ll. 16-63]) but do not teach wherein the message code data comprises a sponsor identifier to match said message signal sets.

Liga teaches embedding data within a data stream specifying the advertiser, which reads on a sponsor, for the purpose of targeting advertisements (see [53-55]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the information used for matching message sets by including information which specifies an advertiser, as taught by Liga in order to provide additional criteria to be used in the selection of advertisements to target a particular user or audience.

Regarding claim 26: The combined teachings of Flickinger, in view of Morrison, teach the method of using information contained within a second signal set, such as programming message code data, to select a particular first signal

set, such as ad messages, for insertion into said second signal set, which is coded with attribute data to assist in the matching of message signal sets where the matching occurs by both coded data having a matching data value (see Flickinger [abstract], see also Morrison [table 1], [col. 3, ll. 16-63]) but do not teach wherein the message code data comprises a product classification to be matched.

Liga teaches embedding data within a data stream specifying a product category identifier, which reads on a product classification, for the purpose of targeting advertisements (see [53-55]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the information used for matching message sets by including information which specifies an product category identifier, as taught by Liga in order to provide additional criteria to be used in the selection of advertisements to target a particular user or audience.

4. Claims 18 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flickinger, in view of Morrison and Pudar et al., U.S. Pub No. 2002/0184091 A1, (hereinafter Pudar).

Regarding claim 18: The combined teachings of Flickinger, in view of Morrison, teach providing data with ad messages, which reads on a cache marker, that directs said CPU to store said first cohesive signal set and delete another cohesive signal set bearing a similar cache marker but having different

identifier information (see Flickinger [56]) but do not teach making such a determination using through the use of a priority code.

Pudar teaches using priority data as a key factor in determining how to respond to received advertisements (see [22], [29]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the data which accompanies the ad message by including priority data as taught by Pudar in order to enable the receiving device to select a better targeted advertisement or maximize revenue is priority is based on the pricing of advertisements (see [29]).

Regarding claim 27: The combined teachings of Flickinger, in view of Morrison, teach providing data with ad messages, which reads on a cache marker, that directs said CPU to store said first cohesive signal set and delete another cohesive signal set bearing a similar cache marker but having different identifier information (see Flickinger [56]) but do not teach making such a determination using through the use of a priority code.

Pudar teaches using priority data as a key factor in determining how to respond to received advertisements (see [22], [29]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the data which accompanies the ad message by including priority data as taught by Pudar in order to enable the receiving device to select a better targeted advertisement or maximize revenue is priority is based on the pricing of advertisements (see [29]).

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5. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flickinger, in view of Morrison, Pudar and Picco.

Regarding new claim 28: The combined teachings of Flickinger, in view of Morrison and Pudar, teach using priority data which is embedded in a message signal (see [22], [29]) but do not teach wherein the priority code is a date/time stamp.

Picco teaches a data/time stamp (see [col. 10, ll. 62 through col. 11, ll. 1] for a date stamp which maintains the time when content will expire and also a time stamp which maintains the times which content may be viewed).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to include a date/time stamp, as taught in Picco, when embedding priority data in message signals, as taught in the combined teachings of Flickinger, in view of Morrison and Pudar, because with limited space, it is important to optimizing the available storage used to hold content by overwriting and deleting content such as advertisements that have expired and are no longer relevant, even though at the time of reception the priority was high.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Thomas whose telephone number is (571) 270-5080. The examiner can normally be reached on Mon. - Thurs., 8:00 a.m. - 5:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Koenig can be reached on (571) 272-7296. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

J. Thomas

/Andrew Y Koenig/
Supervisory Patent Examiner, Art Unit 2423